IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 23807 of 2007(H)

CMA.1/1999 of D.C. & SESSIONS COURT,KOLLAM
OS.382/1996 of MUNSIFF COURT, KARUNAGAPPALLY

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PETITIONER:

C.S. SOMAN, S/O. SADASIVAN,
CHANGANATHU VEEDU, CHERUSSERIBHAGOM WARD,
KARUNAGAPPALLY, KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:

J. GILBERT,
SUNIL BHAVANAM, MEKKAD WARD, PANMANA VILLAGE,
CHAVARA, KOLLAM DISTRICT.

BY ADV. SRI.K.G.ANIL BABU
SRI.CYRIAC KURIAN
SRI.A.SHANAVAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: THE TRUE COPY OF THE JUDGMENT IN O.S. NO: 382/96 DATED 17.12.1997 OF THE MUNSIFF COURT, KARUNAGAPPALLY

EXT.P2: THE TRUE COPY OF THE ORDER IN I.A. NO: 95/12998 IN O.S. NO: 382/96 BEFORE THE MUNSIFF COURT, KARUNAGAPPALLY

EXT.P3: -DO- OF THE ORDER IN C.M.A. NO: 1/1999 BEFORE THE DIST. COURT, KOLLAM DATED 16.6.1999

EXT.P4: -DO- OF THE JUDGMENT IN C.R.P. 2008/1999 BEFORE THIS HON'BLE COURT

EXT.P5: THE TRUE COPY OF THE JUDGMENT IN SPECIAL LEAVE TO APPEAL (CIVIL) NO:22914/2001 DATED 25.10.2002 BEFORE THE HON'BLE SUPREME COURT, KOLLAM

EXT.P6: -DO- OF THE JUDGMENT IN C.M.A. NO: 1/1999 DATED 21.8.2003 BEFORE THE DISTRICT COURT, KOLLAM

EXT.P7: -DO- OF THE ORDER IN INTERLOCUTARY APPLICATION NO: 95/1998 IN O.S. NO: 382/1996 DATED 26.5.2004

EXT.P8: -DO- OF THE ORDER IN I.A. NO: 13330/2004 DATED 6.8.2005

EXT.P9: -DO- OF THE ORDER IN I.A. NO: 1524/2006 IN C.M.A. NO: 76/2006 OF THE DIST. COURT, KOLLAM DATED 4.7.2007

jj /TRUE COPY/

P.A. TO JUDGE

M.N. KRISHNAN, J.

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W.P.C. NO. 23807 OF 2007

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Dated this the 16th day of October, 2007.

J U D G M E N T

This writ petition is filed against the order of the District Judge, Kollam in I.A.No.1524/06 in CMA 76/06. The Court below after dismissing the application for condoning the delay dismissed the CMA as well. The suit is of the year 1996 and an exparte decree was passed. He filed an application for setting aside the exparte decree as I.A.95/98 which was dismissed against which CMA 1/99 was filed and the matter went up to the Apex Court and the Apex Court directed the matter to be reconsidered. CMA was remanded to the trial court for fresh disposal and the trial court dismissed it on 26/5/04. The petitioner thereafter moved an I.A.1330/04 for reviewing the order in I.A.95/98 which also ended in dismissal. Thereafter it is seen that a CMA is filed with a delay of 856 days. The learned District Judge has considered the matter threadbare giving all particulars and it

has been stated that though the review application was dismissed as early as on 6.8.05, the present CMA was filed only on 6.11.06 which shows that for almost 15 months no action was taken. As observed by the District Judge when an application for review is filed normally the original of the order also has to be produced and when review application is dismissed it can be taken back and appeal be preferred. One cannot hold that the petitioner was not aware of the legal proceedings for the reason that he had taken the matter upto the Apex Court. So, in such a situation the petitioner should have been vigilant and more careful. The reasons averred for the delay is that he was unwell. He did not mount the box nor did he produce any scrap of paper to show that he was laid up at any point of time. Unless there is some evidence one cannot condone the delay and one cannot find fault with the Court below for not condoning the delay. I am conscious of the fact that in a case of this nature the Court has to take a liberal view but at the same time it is also to be born in mind that unless there is some reasonable and acceptable

explanation and evidence tendered on that behalf the Court as a matter of course cannot condone the delay. Here, except for the mere averments in the affidavit nothing is forthcoming to condone the delay which has taken place after the disposal of the review application on 6.8.05. Therefore, I do not find any mistake committed by the Court below in disallowing the prayer to condone the delay. Therefore the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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